

Patrick F. Bright (State Bar No. 68709)
WAGNER, ANDERSON & BRIGHT, PC
3541 Ocean View Boulevard
Glendale, California 91208
Tel: (818) 249-9300
Email: pbright@patentattorney.us

Attorneys For Plaintiff
MEGA DISTRIBUTION INT'L, INC.

Jennifer Salzman Romano (CSB No. 195953, jromano@crowell.com)
Laura Schwartz (CSB No. 034172013, LSchwartz@crowell.com)
CROWELL & MORING LLP
515 South Flower St., 40th Floor
Los Angeles, CA 90071
Telephone: 213.622.4750
Facsimile: 213.622.2690

Frank B. Janoski (Mo. Bar No. 32402) (*Pro Hac Vice* to be filed)
Eric D. Block (Mo. Bar No. 65789) (*Pro Hac Vice* to be filed)
LEWIS RICE LLC
600 Washington Avenue, Suite 2500
St. Louis, MO 63101
Telephone : 314.444.1307
Facsimile :
Email: fjanoski@lewisrice.com
eblock@lewisrice.com

Attorneys for Defendant
MATTOON RURAL KING SUPPLY, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MEGA DISTRIBUTION INT'L,
INC.,

Plaintiff,

v.

MATTOON RURAL KING
SUPPLY, INC., et al.,

Defendant.

Case No. 2:15-CV-03639-DMG(PJWx)

**AMENDED STIPULATED
PROTECTIVE ORDER**

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15 **B. GOOD CAUSE STATEMENT**

16 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which protection from public disclosure and from use
19 for any purpose other than prosecution of this action is warranted. Such confidential
20 and proprietary materials and information may be, among other things, confidential
21 business or financial information, information regarding confidential business
22 practices, sensitive customer information, or other confidential research,
23 development, or commercial information (including information implicating
24 privacy rights of third parties), information otherwise generally unavailable to the
25 public, or which may be privileged or otherwise protected from disclosure under
26 state or federal statutes, court rules, case decisions, or common law. Accordingly, to
27 expedite the flow of information, to facilitate the prompt resolution of disputes over
28 confidentiality of discovery materials, to adequately protect information the parties

are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. **DEFINITIONS**

2.1 Action: this pending federal law suit.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

1 2.8 “HIGHLY CONFIDENTIAL” Information or Items: information
2 (regardless of how it is generated, stored or maintained) or tangible things
3 containing highly sensitive and private customer information or trade secrets that
4 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
5 above in the Good Cause Statement.

6 2.9 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action and
13 have appeared in this Action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party, and includes support staff.

15 2.12 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.14 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.15 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.
28

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 This Order does not govern the use of Protected Material at trial.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 5.1 Exercise of Restraint and Care in Designating Material for Protection.

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must limit any such designation to specific material that qualifies under
21 this Order. The Designating Party must designate for protection only those parts of
22 material, documents, items, or oral or written communications that qualify so that
23 other portions of the material, documents, items, or communications for which
24 protection is not warranted are not swept unjustifiably within the ambit of this
25 Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to

1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (hereinafter
16 "CONFIDENTIAL legend"), to each page that contains protected material. If
17 only a portion or portions of the material on a page qualifies for protection,
18 the Producing Party also must clearly identify the protected portion(s) (e.g.,
19 by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for
21 inspection need not designate them for protection until after the inspecting
22 Party has indicated which documents it would like copied and produced.
23 During the inspection and before the designation, all of the material made
24 available for inspection shall be deemed "HIGHLY CONFIDENTIAL."
25 After the inspecting Party has identified the documents it wants copied and
26 produced, the Producing Party must determine which documents, or portions
27 thereof, qualify for protection under this Order. Then, before producing the
28 specified documents, the Producing Party must affix the "CONFIDENTIAL

1 legend” to each page that contains Protected Material. If only a portion or
 2 portions of the material on a page qualifies for protection, the Producing
 3 Party also must clearly identify the protected portion(s) (e.g., by making
 4 appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party
 6 identify the Disclosure or Discovery Material on the record, before the close
 7 of the deposition all protected testimony.

8 (c) for information produced in some form other than documentary
 9 and for any other tangible items, that the Producing Party affix in a
 10 prominent place on the exterior of the container or containers in which the
 11 information is stored the legend “CONFIDENTIAL” or “HIGHLY
 12 CONFIDENTIAL.” If only a portion or portions of the information warrants
 13 protection, the Producing Party, to the extent practicable, shall identify the
 14 protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 16 failure to designate qualified information or items does not, standing alone, waive
 17 the Designating Party’s right to secure protection under this Order for such material.
 18 Upon timely correction of a designation, the Receiving Party must make reasonable
 19 efforts to assure that the material is treated in accordance with the provisions of this
 20 Order.

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 23 designation of confidentiality at any time that is consistent with the Court’s
 24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 26 resolution process under Local Rule 37.1 et seq.

27 6.3 The burden of persuasion in any such challenge proceeding shall be on
 28 the Designating Party. Frivolous challenges, and those made for an improper

purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will only be permitted to keep such confidential information as part of the deposition transcript but must limit disclosure per the terms of this Stipulated Protective Order. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.

Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action,
2 as well as employees of said Outside Counsel of Record to whom it is
3 reasonably necessary to disclose the information for this Action;

4 (b) one designated member of House Counsel of the Receiving
5 Party, whose name will be disclosed to the Designating Party and to whom
6 disclosure is reasonably necessary for this Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to
8 whom disclosure is reasonably necessary for this Action and who have
9 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably necessary for this
14 Action and who have signed the "Acknowledgment and Agreement to Be
15 Bound" (Exhibit A);

16 (g) the author or recipient of a document containing the information
17 or a custodian or other person who otherwise possessed or knew the
18 information;

19 (h) during their depositions, witnesses, who authored or received
20 the "HIGHLY CONFIDENTIAL" information or tangible things, and
21 attorneys for such witnesses, in the Action to whom disclosure is reasonably
22 necessary provided: (1) the deposing party requests that the witness sign the
23 form attached as Exhibit A hereto; and (2) they will only be permitted to
24 keep such confidential information as part of the deposition transcript but
25 must limit disclosure per the terms of this Stipulated Protective Order. Pages
26 of transcribed deposition testimony or exhibits to depositions that reveal
27 Protected Material may be separately bound by the court reporter and may
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1 not be disclosed to anyone except as permitted under this Stipulated
2 Protective Order; and

3 (i) any mediator or settlement officer, and their supporting
4 personnel, mutually agreed upon by any of the parties engaged in settlement
5 discussions.

6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
7 **PRODUCED IN OTHER LITIGATION**

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this Action as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” that Party must:

11 (a) promptly notify in writing the Designating Party. Such
12 notification shall include a copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or
14 order to issue in the other litigation that some or all of the material covered
15 by the subpoena or order is subject to this Protective Order. Such notification
16 shall include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be
18 pursued by the Designating Party whose Protected Material may be affected.

19 If the Designating Party timely seeks a protective order, the Party served with
20 the subpoena or court order shall not produce any information designated in this
21 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a
22 determination by the court from which the subpoena or order issued, unless the
23 Party has obtained the Designating Party’s permission. The Designating Party shall
24 bear the burden and expense of seeking protection in that court of its confidential
25 material.

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1 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
 2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced
 4 by a Non-Party in this Action and designated as "CONFIDENTIAL" or
 5 "HIGHLY CONFIDENTIAL." Such information produced by Non-Parties in
 6 connection with this litigation is protected by the remedies and relief
 7 provided by this Order. Nothing in these provisions should be construed as
 8 prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request,
 10 to produce a Non-Party's confidential information in its possession, and the
 11 Party is subject to an agreement with the Non-Party not to produce the Non-
 12 Party's confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the
 14 Non-Party that some or all of the information requested is subject to a
 15 confidentiality agreement with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the
 17 Stipulated Protective Order in this Action, the relevant discovery
 18 request(s), and a reasonably specific description of the information
 19 requested; and

20 (3) make the information requested available for inspection
 21 by the Non-Party, if requested.

22 (c) If the Non-Party fails to seek a protective order from this court
 23 within 14 days of receiving the notice and accompanying information, the
 24 Receiving Party may produce the Non-Party's confidential information
 25 responsive to the discovery request. If the Non-Party timely seeks a
 26 protective order, the Receiving Party shall not produce any information in its
 27 possession or control that is subject to the confidentiality agreement with the
 28 Non-Party before a determination by the court. Absent a court order to the

contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
 2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
 3 may only be filed under seal pursuant to a court order authorizing the sealing of the
 4 specific Protected Material at issue. If a Party's request to file Protected Material
 5 under seal is denied by the court, then the Receiving Party may file the information
 6 in the public record unless otherwise instructed by the court.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within 60
 9 days of a written request by the Designating Party, each Receiving Party must
 10 return all Protected Material to the Producing Party or destroy such material. As
 11 used in this subdivision, "all Protected Material" includes all copies, abstracts,
 12 compilations, summaries, and any other format reproducing or capturing any of the
 13 Protected Material. Whether the Protected Material is returned or destroyed, the
 14 Receiving Party must submit a written certification to the Producing Party (and, if
 15 not the same person or entity, to the Designating Party) by the 60 day deadline that
 16 (1) identifies (by category, where appropriate) all the Protected Material that was
 17 returned or destroyed and (2) affirms that the Receiving Party has not retained any
 18 copies, abstracts, compilations, summaries or any other format reproducing or
 19 capturing any of the Protected Material. Notwithstanding this provision, Counsel
 20 are entitled to retain an archival copy of all pleadings, motion papers, trial,
 21 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
 22 and trial exhibits, expert reports, attorney work product, and consultant and expert
 23 work product, even if such materials contain Protected Material. Any such archival

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1 copies that contain or constitute Protected Material remain subject to this Protective
2 Order as set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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5 Dated: September 15, 2015

WAGNER, ANDERSON & BRIGHT, PC

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7
8 /s/ Patrick F. Bright

Patrick F. Bright

Attorneys for Plaintiff

9 MEGA DISTRIBUTION INT'L, INC.

10 Dated: September 15, 2015

CROWELL & MORING LLP

11
12 /s/ Jennifer S. Romano

Jennifer Salzman Romano

Laura Schwartz

Attorneys for Defendant

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14 MATTOON RURAL KING SUPPLY, INC

15 **ATTESTATION**

16 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that
17 concurrence in the filing of this document has been obtained from the other
18 signatories.

19 Dated: September 15, 2015

/s/ Jennifer S. Romano

Jennifer S. Romano

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 DATED: September 17, 2015

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26 Patrick J. Walsh

27 United States Magistrate Judge

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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on September 10, 2015 in the case of *Mega Distribution Int'l, Inc. v. Mattoon Rural
 King Supply, Inc., et al.*, Case No.: 2:15-CV-03639-DMG-PJW. I agree to comply
 with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions
 and punishment in the nature of contempt. I solemnly promise that I will not
 disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the
 provisions of this Order. I further agree to submit to the jurisdiction of the United
 States District Court for the Central District of California for the purpose of
 enforcing the terms of this Stipulated Protective Order, even if such enforcement
 proceedings occur after termination of this action. I hereby appoint
 _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____